

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

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CC:TEGE:EOEG:ET1- COR-120967-01

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Dear Mr. [REDACTED]

This is in response to your letter dated March 2, 2001, in which you requested a technical ruling or opinion concerning the situation of an employee of an insurance agency.

As a general matter, apart from the procedure for issuing a formal opinion, as described in Revenue Procedure 2001-1, 2001-1 I.R.B. 1, the Internal Revenue Service is not able to provide binding legal advice applicable to particular taxpayers. Since you did not request a letter ruling under the procedure set forth in that revenue procedure, we have reviewed the facts provided to us and are furnishing general information which we hope will be helpful to you. This general information letter is advisory only and has no binding effect on the Service.

Generally, an individual is an employee for Federal employment tax purposes if he has the status of employee under the usual common law rules applicable in determining the employer-employee relationship. Guides for determining that status are found in three substantially similar sections of the Employment Tax Regulations: namely, sections 31.3121(d)-1, 31.3306(i)-1, and 31.3401(c)-1. Additionally, there are a few classes of workers who are considered employees by statute. Under section 3121(d)(3)(B) of the Internal Revenue Code, one class of statutory employees includes "full-time life insurance salesmen." Whether a worker is an employee or an independent contractor with respect to services provided is an important factor in determining whether the worker should receive a Form W-2 or Form 1099 reporting payments made to the worker for those services.

A firm or a worker may file a Form SS-8 to request a determination of the status of a worker for purposes of Federal employment taxes and income tax withholding. We have enclosed a Form SS-8 in case the firm or the worker would like to file a request for such a determination.

We cannot provide any additional information concerning how the worker in your situation can contribute to retirement plans without knowing the status of the worker.

COR-120967-01

I hope this information is helpful. Please call Elliot Rogers at 202-622-6040 (not a toll-free number) if you have any questions.

Sincerely,

Michael A. Swim
Chief, Employment Tax Branch 1
Office of the Associate Chief Counsel
(Tax Exempt and Government Entities)

Enclosure